

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS
LIABILITY LITIGATION

MDL No. 2419
Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:

All Actions

**THE PLAINTIFFS' STEERING COMMITTEE'S PROPOSED AGENDA
FOR THE JANUARY 14, 2016 STATUS CONFERENCE AND DISCOVERY HEARING**

The Plaintiffs' Steering Committee proposes the following agenda for the January 14, 2016 status conference (before both Judge Zobel and Judge Boal at 2:00 p.m.) and discovery hearing (before Judge Boal following the status conference). The defendants, the Post Confirmation Officer, the FDA, and the U.S. Attorney's office have been given an opportunity to comment on this proposed agenda.

A. MOTIONS FOR WHICH ORAL ARGUMENT IS REQUESTED DURING THE DISCOVERY HEARING

1. Saint Thomas Entities' Motion to Amend Bellwether Schedule [Dkts. 2549, 2550]
 - a. STOPNC Defendants' Joinder [Dkt. 2563]
 - b. PSC's response (forthcoming, to be filed on January 13, 2016)
2. PSC's Motion to Compel Specialty Surgery Center and Dr. Lister to Provide Documents and Testimony [Dkt. 2494, 2495, 2496]
 - a. PSC's Motion to Seal [Dkt. 2497]¹
 - b. Specialty Surgery and Dr. Lister's Opposition [Dkt. 2565]
 - c. PSC's reply (forthcoming, to be filed on January 13, 2016)

B. REPORT TO THE COURT

3. Status of bankruptcy
4. Status of insurance declaratory judgment actions

¹According to the Court's January 11, 2016 electronic order [Dkt. 2569], the defendants (as the parties that designated the documents confidential) have until January 25, 2016 to file a statement supporting the request to seal.

- a. *State Farm Fire and Casualty Company v. Specialty Surgery Center PLLC, et al.*, 2:15-cv-00026 (M.D. Tenn.)

5. Status of discovery

- a. Court rulings update:
 - i. Electronic Order Denying (Dkt. 2502) STOPNC Defendants' Motion for Protective Order to Preclude Depositions of Six Howell Allen Physicians [Dkt. 2526]
 - ii. Order Denying PSC's motions for protective order regarding Box Hill Defendants' (Dkt. 2353) and Premier Defendants' (Dkt. 2372) notices of depositions by written questions [Dkt. 2528]
 1. PSC has until February 1, 2016 to submit cross-examination questions
 - iii. Order on (Dkt. 2437) PSC Motion to Compel and (Dkt. 2469) O'Neal Motion for Protective Order Regarding Deposition of Michael O'Neal [Dkt. 2534]
 - iv. Electronic Order Extending Stay of Common Fact Discovery Deadline Applicable to Cases Naming Box Hill and Premier Defendants to March 25, 2016 [Dkt. 2538]
 - v. Electronic Order Extending Stay of Common Fact Discovery to June 1, 2016 for Small-Clinic Cases [Dkt. 2554]
 - vi. Electronic Order Staying Connolly and Notarianni Depositions Pending Criminal Trial [Dkt. 2556]
 - vii. Electronic Order Denying (Dkt. 2474) Barry Cadden's Emergency Motion to Continue to Attend Depositions [Dkt. 2567]
 - viii. Electronic Order Regarding Protocol and Standard for Filing Under Seal [Dkt. 2569]

6. Status of litigation track

- a. Joint Motion to Confirm Satisfaction of Conditions to Global Settlement Agreement of Virginia Cases [Dkt. 2562]
- b. Update on access to Rust-Omni HIPAA-compliant repository
- c. PSC's Notice of Service of Opening Common Expert Reports [Dkt. 2516]

- d. Court Rulings Update:
 - i. Electronic Order Granting (Dkt. 2380) PSC's Motion to Amend Complaints to Add Calisher & Associates as Defendant in Cases Related to Claims Against Specialty Surgery Center [Dkt. 2524]
 - ii. Order Granting motions to dismiss and Abstaining from Exercise of Jurisdiction Over NH Cases [Dkt. 2555]
 - iii. Order Granting Premier Defendants' Unopposed Motion to Dismiss Product Liability Claims [Dkt. 2524]
- 7. Report from *Pro Se* Liaison
- 8. Schedule for future status conferences
 - a. February 11, 2:00 p.m. (Zobel); 3:00 p.m. (Boal)
 - b. March 10, 2:00 p.m. (Zobel); 3:00 p.m. (Boal)

C. FULLY BRIEFED MOTIONS

Motions

- 9. STOPNC Defendants' Emergency Motion to Compel Supplementation of PSC Rule 26 Expert Reports [Dkts. 2557, 2558]
 - a. Electronic Order Setting January 13, 2016 for PSC Response [Dkt. 2568]
 - b. PSC's response (forthcoming)
- 10. Tennessee Clinic Defendants' Motion to Amend and Certify Order for Interlocutory Appeal [Dkts. 2356, 2357]
 - a. PSC's Opposition [Dkt. 2393]
 - b. Premier Defendants' Joinder in Motion to Amend and Certify for Interlocutory Appeal [Dkts. 2416, 2417]
 - i. PSC's Opposition [Dkt. 2445]
 - c. Box Hill Defendants' Joinder [Dkt. 2457]
- 11. Choice of Law Briefing
 - a. Letters
 - i. Premier Defendants' letter [Dkt. 1915]
 - ii. BKC Defendants' letter [Dkt. 1921]
 - iii. Box Hill Defendants' letter [Dkt. 1922]
 - b. Three Pagers

- i. PSC's Statement [Dkt. 1924]
 - ii. Trustee's Statement [Dkt. 1925]
 - iii. Saint Thomas Entities' Statement [Dkt. 1926]
 - iv. Tennessee Clinic Defendants' Statement [Dkt. 1942]
 - v. Premier Defendants' Statement [Dkt. 1927]
 - vi. GDC's Statement [Dkt. 1928]
 - vii. FDA's Statement [Dkt. 1948]
- c. Order re Choice of Law Issues [Dkt. 1938]
- d. Briefs in Response to Order:
 - i. PSC's Response [Dkt. 2004]
 - ii. Ameridose's Joinder in PSC's Memorandum Regarding Choice of Law for cases filed in TN and NJ [Dkt. 2018]
 - iii. Saint Thomas Entities' Response [Dkt. 2071]
 - iv. Tennessee Clinic Defendants' Response [Dkt. 2073]
 - v. Specialty Surgery Clinic Defendants' Response [Dkt. 2064]
 - vi. Premier Defendants' Response [Dkt. 2072]
 - vii. Bhagat and Perkins' Response [Dkt. 2074]
 - viii. PSC's Reply [Dkt. 2097]

12. PSC's Motion for Partial Summary Judgment Regarding Product Liability Claims Against Saint Thomas Outpatient Neurosurgical Center [Dkts. 2300, 2302] (*oral argument held at December 17, 2015 status conference*)

- a. Saint Thomas Entities' Opposition [Dkt. 2465]
- b. Tennessee Clinic Defendants' Response to PSC's Statement of Undisputed Materials Facts in Support of Motion for Partial Summary Judgment [Dkt. 2467]
- c. PSC's Reply in Support of its Motion [Dkt. 2508]

13. Tennessee Clinic Defendants' Cross-Motion for Partial Summary Judgment on Product Liability Claims [Dkts. 2462, 2463, 2464, 2467] (*oral argument held at December 17, 2015 status conference*)

- a. Saint Thomas Entities' Joinder [Dkt. 2465]
- b. PSC's Opposition [Dkt. 2508]

- c. PSC's Response to Tennessee Clinic Defendants' Statement of Undisputed Facts [Dkt. 2509]
 - d. STOPNC Defendants' Surreply [Dkt. 2538]
- 14. Tennessee Clinic Defendants' Motion to Stay Decision on Cross-Motions for Partial Summary Judgment on Product Liability Claims [Dkt. 2466] (*oral argument held at December 17, 2015 status conference*)
 - a. PSC's Opposition [Dkt. 548]
- 15. Saint Thomas Entities' Motion to Strike Dismissals of Bellwether Candidate Cases [Dkts. 2432, 2433] (*oral argument held at December 17, 2015 status conference*)
 - a. Tennessee Clinic Defendants' Joinder [Dkt. 2441]
 - b. PSC's Opposition [Dkt. 2470]

D. BRIEFING IN PROGRESS

Discovery-Related Motions

- 16. PSC's Motion to Amend Case Management Deadlines Regarding Specialty Surgery Center Cases [Dkt. 2506]
 - a. Specialty Surgery Center and Dr. Kenneth Lister's Stipulation on Extension of Time to Respond until January 8 [Dkt. 2544]

Motions for Access to Rust-Omni HIPAA Compliant Repository

- 17. Specialty Surgery's Motion for Access [Dkts. 2453, 2454]
- 18. Ohio and Illinois Medical Defendants' Motion for Access (includes BKC, APAC, and Cincinnati Pain) [Dkt. 2477]
- 19. Box Hill's Motion for Access [Dkt. 2480]
- 20. Premier Defendants' Motion for Access [Dkt. 2501]
- 21. Motion and Joinder of Defendants Abdul R. Barakat, M.D. and Ocean State Pain Management, P.C. for Access [Dkt. 2504]
- 22. PSC working with movants to address

Dispositive Motions

- 23. Ocean State's Motion to Dismiss Product Liability Claims [Dkt. 2388]
- 24. Abdul Barakat, M.D. Motion to Dismiss Product Liability Claims [Dkt. 2390]

Other Motions

- 25. Plaintiffs' Motion to Strike Certain Affirmative Defenses, Cross-Claims, and Third

Party Claims in Box Hill's Answers [Dkts. 2451, 2452]

a. Box Hill's Opposition [Dkt. 2561]

26. Fredia Berry's Motion for Leave to File Motion for Partial Summary Judgment
Against Saint Thomas Clinic Defendants [Dkt. 2559]

Dated: January 13, 2016

Respectfully submitted,

/s/ Kristen A. Johnson

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CERTIFICATE OF SERVICE

I, Kristen A. Johnson, hereby certify that I caused a copy of the above Proposed Agenda to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: January 13, 2016

/s/ Kristen A. Johnson
Kristen A. Johnson, BBO # 667261